

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-MGz-7A [v.4] (10/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Eliminate Stays in CON Appeals.

(Public)

Sponsors: Representative Torbett.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT THE STAYING OF A FINAL DECISION IN A CERTIFICATE OF
NEED CASE DURING THE PENDENCY OF AN APPEAL, AS RECOMMENDED BY
THE HOUSE SELECT COMMITTEE ON CERTIFICATE OF NEED PROCESS AND
RELATED HOSPITAL ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-188(b) reads as rewritten:

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review of all or any portion of any final decision in the following manner. The appeal shall be to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal of the final decision shall be taken within 30 days of the receipt of the written notice of final decision, and notice of appeal shall be filed with the Office of Administrative Hearings and served on the Department and all other affected persons who were parties to the contested hearing. The final decision remains in effect during the pendency of review by the Court of Appeals and the appellant is not entitled to a stay of the final decision pending the outcome of the review. During the pendency of review by the Court of Appeals, the applicant is free to proceed with the development of any approved new institutional health service that is the subject of the final decision. However, the applicant shall not be entitled to recover any damages from either the Department or an appellant for any expenses incurred as a result of proceeding with development prior to a decision by the Court of Appeals.

SECTION 2. G.S. 150B-48 reads as rewritten:

"AtExcept as prohibited in G.S. 131E-188(b), at any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65."

SECTION 3. This act becomes effective October 1, 2013, and applies to appeals filed on or after that date.



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